* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : January 15, 2007
Date of Decision : January 25, 2007

\+ W.P. (C) 19837/2005 & CM 12800/2005

RAM NIWAS ..... PETITIONER
Through :Ms. Richa Kapoor, Advocate

versus

D.D.A. .... RESPONDENT
Through: Ms. Sangita Chandra, Advocate

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

: Dr. S. Muralidhar, J.

1. This writ petition seeks a mandamus to the respondent to carry out mutation in respect of plot No. BP-123, Shalimar Bagh, Delhi in favour of the petitioner and also to hand over possession of the said plot in terms of the recommendations of the Permanent Lok Adalat.

2. The facts of the case are that one Smt. Veera Wali, the mother of the petitioner applied for allotment of residential plot in Shalimar Bagh vide application dated 18.8.1975. The background to this application was that many persons were evicted from the old Subzi Mandi in Delhi and under a special scheme each of them

was allotted a shop at the New Subzi Mandi at Azad Pur. They were also given a residential plot in Shalimar Bagh according to their income.

3. The plot No. C-27 in the New Subzi Mandi was allotted in favour of M/s Darshan Lal and Co. having two partners: Sri Darshan Lal S/o Ayodhya Prasad and Sri Balwant Rai S/o Lal Chand having 2/3rd and 1/3rd shares respectively under a deed of partnership dated 8.9.1965. Shri Balwant Rai went missing since September/October 1971 and was not heard of even till 1975 when the aforementioned special scheme for allotment of residential plots to those occupying places of business at the Old Subzi Mandi was formulated. A shop No. C-27 was allotted to the firm at the New Subzi Mandi.

4. Since Sri Balwant Rai, the petitioner's father went missing since 11.9.1971, his mother Smt. Veera Wali was inducted as a partner on 6.11.1972 with a 33% share. Smt. Veera Wali applied for allotment of plot vide application No. 506 and by letter dated 30.9.1975, she was allotted plot No. BP-123, measuring 100 sq. yards. The demanded amount of Rs. 3011/- was deposited by Smt. Veera Wali by cheque No. 085132 within the time prescribed.

5. The other partner of the firm, viz, Sri Darshan Lal, who is the real brother of Smt. Veera Wali, relinquished his rights in the firm in favour of Smt. Veera Wali. Thus Smt. Veera Wali became the sole legatee of the firm.

6. The possession of the residential plot No. BP-123, Shalimar Bagh was not given to Smt. Veera Wali despite her making the full

payment. By a letter dated 4.7.1980, the respondent informed her that this would be considered only after the shop at C-27 New Subzi Mandi is mutated in her favour. This mutation of the shop, for no fault of Smt. Veera Wali, was done in her favour by the DDA only on 24.11.1990 and this fact was communicated to her on 17.12.1990. Further, without getting possession of the residential plot which she had been pursuing all along, Smt. Veera Wali died in 1994. It is not in dispute that upon her death the present petitioner herein applied on 15.9.1995 for mutating his name in place of his mother Smt. Veera Wali. He also submitted relinquishment deed of the other legal heirs of his late mother.

7. By this time, according to the respondent, a resolution No. 93 dated 4.10.1985 came to be passed by the respondent DDA whereby it was decided that "the cases of 1975-76 in which payment of premium was not either made or delayed, should not be reopened." Clearly the case of the petitioner was not within this category since Smt. Veera Wali had already made full payment demanded in respect of allotment of residential plot No. BP-123, Shalimar Bagh.

8. The respondent also seeks to justify its decision not to grant possession of plot No. BP-123 to Smt. Veera Wali on the basis of a decision taken by it at a meeting dated 4.4.2000 presided over by Lt. Governor to the effect that "the cases of allotment of plots in Shalimar Bagh to shop owners of Subzi Mandi may be closed." The respondent gives no reasons for this unilateral decision, particularly when in cases like that of Smt. Veera Wali, consequent upon a valid allotment the entire payment had already been made and she was denied possession of the plot for no fault of hers.

9. From the counter affidavit filed by the DDA, it appears that there were at least 9 cases where persons were awaiting either allotments or possession of the plots. A review meeting was held on 21.9.1997 by the respondent where it was decided that "the facts of each case had to be examined by the Commissioner (Housing) and Director (RL) in consultation with non-official members; that the applicants should also be heard and the final recommendation should thereafter be submitted to the DDA."

10. It appears that of the 9 cases, in two cases, the allotment was restored by the Lt. Governor and in two cases it was restored on the recommendation of the Lok Adalat. Therefore, 5 cases remained undecided. Two more cases then emerged and all the 7 cases were considered by the Permanent Lok Adalat – DDA presided over by Judge S.M. Aggarwal (Retd.). By a decision dated 19.6.2001, the Permanent Lok Adalat after hearing the petitioner as well as the Deputy Director (RL) DDA found that resolution dated 4.10.1985 did not apply in the present case. It further held as under:

> "Similarly, the petitioner cannot be deprived of his legitimate right on account of order dated 4.4.90 passed in the file of Smt. Santosh Dhawan bearing No.F.16(145)75/LSB(R) as the reason for passing the said order was that allotment made in 1975-76 cannot be regularized for obtaining pre-determined rates of 1975-76 in 1990 when the current market rate was about Rs.8000/- per sq. yd. In the instant case, Smt. Veera Wali had been entitled to apply for allotment of residential plot and had paid the full price as per demand letter dated 30.9.1975. Thus, Authority Resolution No. 93 dated 4.10.1985 nor the order of the then Hon'ble Lt. Governor dated 4.4.90 could be a ground for not issuing letter of possession of the allotted plot to Smt. Veera Wali.
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> Unfortunately, Smt. Veera Wali died on

> 1.12.1994 without enjoying the fruits of the plot allotted to her about 20 years before her death. The petitioner being her son and in whose favour Relinquishment Deed has been executed by all his brothers and sisters on 15.9.1995 registered on that date is, therefore, entitled for issuance of letter of possession of plot No. BP-123 Shalimar Bagh, Delhi.
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> It may be mentioned that it is a case where the petitioner and his mother were made to wait for last 25 years for no fault of theirs and delay was entirely due to bureaucratic working. I, therefore, direct that the copy of this order along with the file of the plot shall be submitted to the Hon'ble Lt. Governor, Delhi for his kind approval. Case is adjourned to 14.8.2001."

11. Although one would have expected DDA to have respected the decision of the Permanent Lok Adalat, it apparently did not do so and desired to once again examine all the 11 cases (i.e., the 7 cases and the earlier 4 cases) afresh. It is stated in the counter affidavit that after examining the matter, the Lt. Governor took a decision to the following effect:

> "I am of the opinion that DDA should abide the recommendations made by the Authority's Resolution No. 93/1985, the orders of the then Lt. Governor dated 4-4-90 and the recommendations of the Committee constituted under Commissioner (Housing) of not re-opening of all these cases."

There is nothing to indicate that there was any consideration of the facts of the individual cases including that of the petitioner's mother.

12. In the counter affidavit it is stated by the DDA that the 9 cases were closed mainly on the following grounds:-

> "i) Dispute in partnership of firm.
> ii) Non mutation of shop plot in the name of the partner of the firm.
> iii) Belated payment of premium."

It is plain from the facts narrated hereinabove that the petitioner's case does not fall under any of the above categories. First, there was no dispute in the firm of M/s Darshan Lal and Co. The

petitioner's mother became a partner by virtue of the Partnership Deed dated 6.11.1972. This has been confirmed by the Permanent Lok Adalat in its proceedings dated 19.6.2001. The mutation of the shop C-27 at the New Subzi Mandi has taken place in favour of Smt. Veera Wali by the DDA itself, although belatedly on 17.12.1990. The mutation of the shop in favour of the petitioner's mother was in her capacity as a partner of the firm. The delay in the mutation was attributable wholly to the DDA. The third ground of closure, viz., belated payment of premium, also does not apply to the present case. Therefore, there was absolutely no justification whatsoever for closure of the petitioner's case.

13. The assertion made in the counter affidavit that "subsequently it was found that she (Smt. Veera Wali) was neither a partner in the firm of Darshan Lal and Co. to whom the shop plot was allotted nor she was allottee of the shop plot." is not only without basis, but completely belied by the fact that the shop C-27 allotted in the New Subzi Mandi at Azad Pur was in fact mutated in the name of Smt. Veera Wali by the DDA itself on 17.12.1990. Therefore, the stand taken by the DDA in this case is wholly unjustified. The unilateral decision as evidenced by resolution dated 4.10.1985, does not apply to the case of Smt. Veera Wali. The decision of the Lt. Governor at the meeting on 4.4.1990 is also unsustainable in law on account on non-application of mind to the facts of Smt. Veera Wali's case. Consequently, the stand of the respondent that it did not process the case of the petitioner for allotment of the residential plot since the case "was already closed in view of the Authority Resolution and orders of the Lt. Governor, Delhi" is wholly unjustified.

14. It is also a matter of concern that in the present case the DDA did not act on the findings rendered by the Permanent Lok Adalat that was set up exclusively for dealing with the disputes involving DDA. In the counter affidavit, it is stated that when the meeting was held on 19.10.2005, the authority took the following decision:-

> "Sh. Mahabal Mishra sought an enquiry into restoration of four plots by the L.G. against specific decision contrary to the one taken by the Authority. **He pointed out that Lok Adalat recommendations were advisory in nature and could not be made on the basis for superseding the decision of the authority.**
> After detailed discussion, it was decided by the Authority to close the matter." (Emphasis supplied)

15. This Court is constrained to observe that the Permanent Lok Adalat is a statutory body in terms of Section 22 of the Legal Services Authorities Act, 1987 (LSA Act). The purpose of setting up such a body would be rendered nugatory if its decisions are sought to be undermined by the unreasonable stand of the DDA. The object of introducing these provisions, and in particular Chapter VI A, in the LSA Act would be defeated if DDA does not accept the decision of its own Permanent Lok Adalat, particularly where it is upon an investigation of facts and after hearing the representative of the DDA.

16. The Court's attention is drawn to a decision dated 6.10.2006 in Writ Petition No. 20190/2005 ***(Smt. Santosh Dhawan v. DDA)*** where, in identical circumstances, this Court allowed the writ petition and issued consequential directions.

17. Accordingly this writ petition is allowed and the following directions are issued to the DDA:-

(a) The DDA will mutate and regularize the plot No. BP-123, Shalimar Bagh, Delhi (measuring 100 sq. yards) in favour of the petitioner.

(b) The DDA will hand over the possession of the Plot No. BP-123, Shalimar Bagh, Delhi (measuring 100 sq. yards) to the petitioner.

(c) The DDA will pay to the petitioner costs of Rs.15,000/-

(d) Directions (a) to (c) above will be complied with by the DDA positively within three months from today and in any event not later than 25.4.2007.

18. With the above directions, the writ petition is allowed and disposed of as such. The pending application also stands disposed of.

S. MURALIDHAR, J.

January 25, 2007
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